FILED
FEB 27 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1941

Nos. 921 and 922

BLACK DIAMOND LINES, INC.,
Petitioner,

against

UNITED STATES NAVIGATION CO., INC.,
Respondent.

BLACK DIAMOND LINES, INC.,
Petitioner,

against

UNITED STATES NAVIGATION CO., INC.,
Respondent.

BRIEF OF LIBELANT-RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

JOHN TILNEY CARPENTER,
Counsel for Libelant-Respondent,
70 Pine Street,
New York, N. Y.

TABLE OF CONTENTS

PAGE

Statement 1

The Facts 2

Decision of the District Court..... 4

Decision of the Circuit Court of Appeals..... 5

The Questions Presented..... 6

Argument 7

POINT I—The decision of the Circuit Court of Appeals is not in conflict with decisions of this Court or of other Courts..... 9

1. The decision is not in conflict with decisions of this Court 9
2. The decision is not in conflict with other Circuit Court of Appeals decisions..... 12
3. The decision below is in conformity with established precedents..... 15

POINT II—The Personal Property Law of New York is neither involved nor controlling..... 15

1. Section 33(2) of the New York Personal Property Law does not apply..... 15
2. The New York statute cannot control a court of admiralty in its adjudication of maritime contracts 16

POINT II —The petition presents no question of public importance or any other question requiring this Court to review the decision of the Circuit Court of Appeals, and the petition for a writ of certiorari should be denied..... 18

TABLE OF CASES CITED

PAGE

Am. Law Ins., Restatement: Contracts, Sec. 235(c). 12
Consumers' Cotton-Oil Co. v. Ashburn, (C. C. A. 5th, 1897) 81 Fed. 331 13
Gilbert & Secor v. United States, 8 Wall. 358 10
Housekeeper Pub. Co. v. Swift et al., (C. C. A. 8th, 1899) 97 Fed. 290 ..... 13, 14
James v. Brophy, (C. C. A. 1st, 1895) 71 Fed. 310 .. 16
Lawrence v. Porter, (C. C. A. 6th, 1894) 63 Fed. 62. 15
Lichtenberg v. Harvey, (C. C. A. 2nd, 1932) 57 F. (2d) 82 13
Luster et al. v. Gilruth, (C. C. A. 8th, 1932) 60 F. (2d) 751 ..... 12, 13
Lutz v. Douglass et al., (C. C. A. 2nd, 1921) 273 Fed. 685 17
MacLaren v. Windram Mfg. Co., (1934) 287 Mass. 221 12
Matson Navigation Co. v. U. S., 284 U. S. 352 16
McCabe Construction Co. v. Utah Construction Co., 199 Fed. 976 14
Morewood v. Enequist, 23 How. 491 16
Parish et al. v. United States, (1869) 8 Wall. 489 .9, 10, 11
Schwartzreich v. Baumann-Basch, Inc., (N. Y.) 105 Misc. 213, aff'd 188 App. Div. 960, aff'd 231 N. Y. 196 14
Seitz v. Brewers' Refrigerating Machine Co., (1891) 141 U. S. 510 11
Union Fish Co. v. Erickson, (1919) 248 U. S. 308 ... 17
United States ex rel. The International Contracting Company v. Lamont, (1894) 155 U. S. 303 ..... 9, 10
Warren v. Stoddart, 105 U. S. 224 15
West India S.S. Co. v. Chicago Housewrecking Co., (C. C. A. 2nd, 1918) 249 Fed. 338 16-17
Wigmore, Evidence, 3d Ed., Vol. IX, Sec. 2430 12
Williston, Contracts, 1936, Sec. 633 12

IN THE

Supreme Court of the United States

OCTOBER TERM 1941

Nos. 921 and 922

BLACK DIAMOND LINES, INC.,
Petitioner,

against

UNITED STATES NAVIGATION CO., INC.,
Respondent.

BLACK DIAMOND LINES, INC.,
Petitioner,

against

UNITED STATES NAVIGATION CO., INC.,
Respondent.

BRIEF OF LIBELANT-RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

Statement

The opinion of the Circuit Court of Appeals for the Second Circuit (R. 30-36) is reported at 124 F. (2d) 508, and 1942 A. M. C. 128. The opinion of the United States

District Court for the Southern District of New York (R. 13-15) is reported at 1941 A. M. C. 354, 37 Fed. Supp. 1005.

Two actions between the same parties are involved, based upon identical facts (except that the charters covered two vessels which made one round voyage to South Africa on different dates), and upon identical issues of law. Both actions were brought in personam in admiralty by the respondent against the petitioner herein to recover damages for petitioner's breach of oral agreements to charter the S.S. *Black Tern* and the S.S. *Black Hawk* to the respondent. The petitioner herein (respondent below) excepted to both libels on the ground that they did not state facts sufficient to constitute a cause of action. Arguments were heard and decided by the District Court and by the Circuit Court of Appeals as one case, though not consolidated. For purposes of convenience respondent submits one brief herein in opposition to both petitions for certiorari.

The Facts

As the petitioner herein saw fit to except to the libels rather than answer them on the merits, the well pleaded allegations of the libels were accepted by both Courts below as a proper statement of the facts which are set forth in the decision of the Circuit Court of Appeals as follows (R. 30, 31):

The libels alleged that on December 27, 1939, the parties entered into oral agreements whereby the petitioner agreed to let, and the respondent to hire, the steamers *Black Hawk* and *Black Tern* for a period of "two to about five months trading South Africa, Capetown/Beira range,

South America or the Far East." They further alleged that it was orally agreed that these vessels should enter upon performance of the charters on completion of discharge of their inbound cargoes and that the terms of the charters should continue during the above periods until their redelivery (unless lost), at a safe United States port north of Hatteras but not north of New York, upon respondent's giving not less than ten days' notice of each vessel's expected date of redelivery. At the time of making the oral charters it was also agreed that the terms of the oral charters should be reduced to writing and signed by the parties. Thereafter petitioner's broker who had brought about the agreements reduced the oral charters to writing, containing all the terms that had been agreed upon orally. But the petitioner, in breach of its agreement, refused to sign these written charters and refused to permit the respondent to have the use and hire of the vessels unless the latter signed written charterparties containing a provision which had not been agreed upon before, viz., a limitation of respondent's use and hire of the vessels to only one round voyage to South Africa, Capetown/Beira range, or South America or the Far East. By reason of this threatened breach of the oral charters respondent on or about January 17, 1940, delivered to petitioner incorrect writings signed by respondent, together with notifications in writing that the written charters did not correctly state the agreed periods and trading limits and that its signature was made under protest and with reservation of its rights. Petitioner received these writings and retained them without objection. Thereafter the steamers entered into respondent's employment and each made a round voyage from New York to South Africa, Capetown/Beira range and return within the period and trading limits of

the oral charter but, in breach of the original oral agreements, the petitioner refused to perform the same for the remainder of the agreed periods of about five months and withdrew the vessels from respondent's service. By reason of the above breaches of the oral agreements respondent was compelled to charter other vessels for the balance of the charter periods and within the trading limits thereof, all to its damage, for which recovery is sought.

Both Courts below also found as a fact that, simultaneously with delivering the signed charterparties providing for only one round voyage, the respondent herein delivered to the petitioner a written communication as follows:

> "In view of your January 15th letter and your other statements that you will not let us have the use of these vessels when their current charters expire unless we sign the charter parties in the form demanded by you—which do not correctly state the periods and trading limits which we agreed upon—we return them herewith duly signed by us, under protest, and reserve our rights in the premises" (R. 18, 19, 32).

Two round voyages to South Africa could have been made under the oral agreements (R. 11, 31-32).

Decision of the District Court

The District Court for the Southern District of New York (Hon. George Murray Hulbert, D. J.) sustained the exceptions and dismissed the libels, saying:

> "There can be no doubt that the oral contract was a firm agreement between the parties, free of all ambiguity or mutual mistake and that there was a breach of that contract after it was reduced to writing and presented to the respondent for execution.

The libelant might well have relied and rested upon that contract and brought suit for damages" (R. 14).

"It seems clear to me that in the execution of the charter parties actually signed by libelant and respondent, the former abandoned its rights under the oral contract, the terms of which were then incorporated in the contract as signed" (R. 15).

Decision of the Circuit Court of Appeals

Upon the appeal of the libelant below (respondent herein), the Circuit Court of Appeals for the Second Circuit (Hon. Augustus N. Hand and Hon. Charles E. Clark, C. JJ.), in an opinion handed down January 5, 1942, reversed the District Court's decision and held that respondent herein had not lost its rights to recover damages for petitioner's breach of the oral agreements. It accordingly overruled the exceptions to the libels with leave to the petitioner herein to join issue and proceed to trial if it be so advised (R. 35).

The majority opinion of the Circuit Court of Appeals held in part that:

"The signed charterparties were without consideration and even if, because of the provisions of the New York Statute [Section 33(2) of the Personal Property Law], no consideration was necessary, they were not a substitute for the prior oral charters because they only covered a part of the subject-matter embraced in the original agreements and the latter remained in effect to the extent that they were not included in the written charters (R. 32) * * * the written charters did not wipe out or rescind the oral agreements. * * * In view of the appellant's notices of protest and reservation of rights which accompanied the signature of the written charters it seems unreasonable to say that the execution of the charters

> signified an abandonment of the option for two voyages granted by the oral agreements or effected more than an agreement to accept a charter for a single voyage and a promise to pay hire *pro tanto* for what was the minimum requirement of the earlier agreement" (R. 33).

The Court further held that the execution of the written charters should be treated as a proper attempt to mitigate damages for petitioner's breach of the oral agreements (R. 34, 35).

Hon. Learned Hand, C. J., dissented upon the ground that, in his view, the oral agreements were superseded by the later written charterparties notwithstanding the particular surrounding facts, and that consideration for such modification was unnecessary by virtue of Section 33(2) of the New York Personal Property Law. Though expressing doubt, he considered that the New York statute should be held to cover maritime charterparties and consequently that petitioner could not be held accountable for its breach of the oral agreements, but added:

> "It is a rather curious irony that a statute, designed generally to avoid injustice, should in this instance operate so harshly" (R. 36).

The Questions Presented

The issues presented to the Courts below were purely questions of private contract law for the chartering of ships. The fundamental question was whether valid oral charters, complete in all their terms and granting the respondent the use of the ships for a period "two to about five months trading" to foreign countries, were, after petitioner's breach, superseded by subsequent written

charterparties which provided for only "one round voyage" to the prescribed ranges; and whether respondent, by having signed those charterparties for "one round voyage" and delivered them with a written communication stating that they did not correctly state the agreed periods and that respondent was signing under protest and with reservation of its rights, nevertheless forfeited its right to damages for petitioner's then existing breach of its oral agreements.

Argument

The opinion of the Circuit Court of Appeals (R. 30-31, 32) contains a complete statement of the facts and shows that the record was carefully examined and considered by that Court. The question of applying the New York Personal Property Law was also considered at length by both the majority and the minority in the Circuit Court of Appeals. The petitioner presents no suggestion that the Court overlooked or misapprehended any essential fact or any of the arguments of counsel.

The petitioner's grounds for seeking review by this Court appear to be based chiefly upon (1) supposed conflict with three decisions of this Court, four Circuit Court of Appeals decisions, and one District Court decision, and (2) the assertion that a State statute is involved and that the decision below creates a "probable" conflict with lower New York State Court decisions.

Petitioner's argument overlooks the fact that in all questions involving the construction of private contracts, a Court's essential inquiry concerns the meeting of the minds as expressed between the parties, and that it must necessarily be guided by the expressed intentions of the

parties under the facts and circumstances of each case. This is particularly true when the question involves the integration of contracts.

The petitioner's argument also overlooks the fact that under the particular facts in this case, the parties had already made completely integrated contracts for chartering the ships for "two to about five months" at the time when they executed the written charterparties for "one round voyage"; that the respondent's written communication which accompanied the signed charters (retained without objection by the petitioner, R. 31) was not a mere "protest" but expressly withheld respondent's assent to integrating the existing oral agreements into the written charters and reserved all rights under the former; and that, as held by the Circuit Court of Appeals, both the oral and the written contracts could stand together without conflict (R. 33).

This fundamental factual situation was absent in all of the decisions of this Court and of the Circuit Courts of Appeals upon which the petitioner relies.

The New York statute is not directly involved. It could enter into the case only secondarily upon a finding that the majority of the Court below was wrong in its interpretation of the contracts. Before the statute could become applicable to excuse the absence of consideration for the written charterparties, there must first be a determination that those written charterparties amounted to an "agreement changing, modifying or discharging" the existing oral contracts. The majority of the Court below, upon careful consideration, held that the written charterparties did not have this effect and hence did not come within the statute. The dissenting opinion thought that

they did, and, with doubts, said "tentatively" that the State statute should be held to cover maritime contracts (R. 36). That such a State statute cannot control courts of admiralty in maritime contracts will be demonstrated *infra*.

POINT I

The decision of the Circuit Court of Appeals is not in conflict with decisions of this Court or of other Courts.

1. The decision is not in conflict with decisions of this Court.

In the Court below, the petitioner unsuccessfully sought to sustain its position that the written charter-parties superseded the oral agreements, upon the purported authority of *United States ex rel. The International Contracting Company* v. *Lamont,* (1894) 155 U. S. 303, and *Parish et al.* v. *United States,* (1869) 8 Wall. 489. The Circuit Court of Appeals' discussion of those decisions (R. 33) shows why they do not apply to the present case.

In *United States* v. *Lamont,* the principal point decided was that mandamus will lie only to enforce a peremptory and plainly defined ministerial duty, as contra-distinguished from a merely discretionary duty, and therefore would not lie to compel the Secretary of War to sign a contract with the lowest bidder for dredging. The fact that the Army Engineer who had accepted the relator's bid requested him to furnish the names and addresses of his proposed sureties and wrote that the "execution of the necessary bond, however, will be deferred until the articles of agreement have been completed in every respect" (p. 304), shows that no contract whatever had

been made at the time the Secretary of War refused to consummate the contract. Thus it is clear that the only contract which the parties made was the so-called "second" one.

This Court then considered the effect of the relator's act in having subsequently made another bid and entering into a contract thereunder at lower prices. It held that even if mandamus would lie, the relator was in no position to avail himself of such relief, because he had entered into the later contract of his own accord, acted under it, taken its advantages and received payment, and was therefore "estopped from denying the validity of the contract" (p. 309). The Court further held that the relator's protests in making his contract did not better his position. Moreover, as held by the Court below, the "second" contract covered the entire subject-matter (R. 33).

The principal feature which distinguishes *United States* v. *Lamont* from the present case—namely, that there was no contract in existence at the time the parties made their "second" one—is disclosed not only by an analysis of the facts, but by the concluding paragraph of the Court's opinion, in which the Court said:

> "The whole case of this relator is covered by *Gilbert* v. *United States*, 8 Wall. 358,"

followed by a quotation which, apparently through inadvertence, is not found in *Gilbert* v. *United States* but does appear in *Parish et al.* v. *United States*, (1869) 8 Wall. 489.

In both *Gilbert & Secor* v. *United States* and *Parish et al.* v. *United States*, the parties made only one contract, and the Court consequently held that their rights were

governed thereby. In the former case the Court held that an Act of Congress directing the Secretary of the Navy to enter into a contract with certain parties did not of itself create a contract, and said:

> "If these transactions are to be construed by the rules which govern agreements between private individuals, there does not appear to be any reason to infer a contract prior to the written agreement between the parties; nor any reason why that agreement should not govern the rights of the parties" (pp. 361, 362).

In *Parish et al.* v. *United States* this Court said:

> "The action of Magruder (Surgeon General), until the approval of the Secretary of War, was merely initiatory to a contract. He could not bind the United States in any way" (p. 490).

The distinction is plain. In the decisions relied upon by the petitioner as ground for review by this Court, the parties were not under contract at the time they made their written agreement. In the present case the parties were bound by valid oral agreements, and the Circuit Court of Appeals correctly held that the subsequent written charterparties did not supersede the oral agreements because, under the facts of the case, the respondent, in writing, had manifested its intent not to rescind the oral agreements. Moreover, consideration therefor was lacking (R. 33).

We deem it unnecessary to dwell at length upon petitioner's contention that the decision of the Circuit Court of Appeals is in conflict with the parol evidence rule or with *Seitz* v. *Brewers' Refrigerating Machine Co.,* (1891) 141 U. S. 510. Its decision is in entire conformity with

those established principles. Petitioner's argument entirely overlooks the existence and effect of respondent's contemporaneous written communication of January 17, 1940 (R. 18-19, 32), which withheld its assent to integration. Integration depends upon expressed intention. Williston, *Contracts,* 1936, Sec. 633; Wigmore, *Evidence,* 3d Ed., Vol. IX, Sec. 2430; *MacLaren* v. *Windram Mfg. Co.,* (1934) 287 Mass. 221, 227. A writing is interpreted as a whole, and all writings forming part of the same transaction are interpreted together. *Am. Law Ins., Restatement: Contracts,* Sec. 235(c).

2. The decision is not in conflict with other Circuit Court of Appeals decisions.

Petitioner's reliance upon *Luster et al.* v. *Gilruth,* (C. C. A. 8th, 1932) 60 F. (2d) 751, is unfounded. In that case the parties, after making oral contracts for free delivery of certain stock, later made inconsistent written contracts for the purchase of the same stock at a price. Upon a full review of a complicated state of facts, the Court held that the later written contract prevailed. In reaching this conclusion the Court found that the only rational explanation of the entire contract was:

> "that all of the parties *recognized* the ownership of this disputed stock to be in Hermann, and Hermann is giving plaintiffs and *plaintiffs are accepting* a contract of option upon all of the stock owned by Hermann at the full net book value of that stock" (p. 755). (Italics ours.)

The Court further found that:

> "It is impossible for us to reconcile this sale contract with the oral contract in any way which will permit both to stand" (p. 755).

Luster et al. v. *Gilruth* is clearly not in point, because in that case the parties intended to integrate the oral contract into the subsequent written one; and the two being mutually exclusive, the later contract was held to prevail. In the present case the respondent, by written communication accompanying the charterparties and retained by the petitioner without objection, expressly denied its assent to such integration. Also, as found by the Court below, the oral agreements and the written charterparties in the present case were not mutually exclusive. Both could stand together, and performance of the written charterparties was *pro tanto* performance of the oral agreements (R. 33).

Likewise, in *Housekeeper Pub. Co.* v. *Swift et al.,* (C. C. A. 8th, 1899) 97 Fed. 290, there was not, as there is in the present case, any writing contemporaneous with the second contract expressing plaintiff's intention to continue the earlier contract in effect or to reserve its rights thereunder. Both contracts being for the sale of the same property at different prices, they were mutually inconsistent and exclusive, and the Court accordingly held that the later contract must prevail.

Similarly, in *Consumers' Cotton-Oil Co.* v. *Ashburn,* (C. C. A. 5th, 1897) 81 Fed. 331, the plaintiff made a second contract without any contemporaneous writing refusing to integrate the earlier contract into the later one or reserving his rights under the former. Moreover, the Court expressed a doubt that any prior contract at all had been made (p. 334).

Lichtenberg v. *Harvey,* (C. C. A. 2nd, 1932) 57 F. (2d) 82, did not involve any controversy between the parties to the contract, the question being whether an unlawful preference in bankruptcy had been acquired by the buyer. It was doubtful whether any oral contract had been made

at all at the time when the parties, freely and voluntarily, made their written agreement.

In *McCabe Construction Co.* v. *Utah Construction Co.*, 199 Fed. 976, a District Court in Oregon held that a written contract which expressly stated that it superseded an earlier contract, had just that effect. The feature which distinguishes that case from the present one appears in the quotation from the Court's opinion at page 18 of the petitioner's brief herein, in which the Court said:

> "The second contract covers, and *was intended by the parties to cover,* the same subject-matter as the first and therefore superseded it." (Italics ours.)

In the present case, the letter which respondent sent with the written charterparties shows that such intent was lacking.

Both the *McCabe* case and *Housekeeper Pub. Co.* v. *Swift* have been criticized for failing to consider the absence of consideration for the later superseding contract. *Schwartzreich* v. *Baumann-Basch, Inc.*, (N. Y.) 105 Misc. 214, aff'd 188 App. Div. 960, aff'd 231 N. Y. 196.

In its efforts to find a conflict between the decision of the Court below and other decisions the petitioner has taken isolated statements of the Courts out of their context, and has failed not only to cite any cases on parallel facts, but, by minimizing the respondent's contemporaneous letter of January 17, 1940 (R. 18-19, 32) to the status of a mere "protest", has overlooked the significance and effect which the majority of the Circuit Court of Appeals correctly accorded to it (R. 32, 33, 34).

3. The decision below is in conformity with established precedents.

Far from being in conflict with other applicable decisions, the decision of the Court below is supported by abundant authority, as pointed out in its opinion (R. 33, 35). Indeed, it applied exactly the principles laid down by Judges Taft and Lurton in *Lawrence* v. *Porter,* (C. C. A. 6th, 1894) 63 Fed. 62 (R. 34). In that case the Court held that upon seller's breach of contract the buyer is obligated to mitigate his damages, even though he must make another contract with the seller, citing *Warren* v. *Stoddart,* 105 U. S. 224; and that:

> "Such a purchase from the seller is not the abandonment of the original contract by the substitution of another, nor would the purchase operate to the seller's advantage, save in so far as the damage resulting from his bad faith was thereby reduced" (p. 67).

POINT II

The Personal Property Law of New York is neither involved nor controlling.

1. Section 33(2) of the New York Personal Property Law does not apply.

The majority of the Court below correctly held that at most this statute validated the written charterparties, but since these were not received in substitution for the oral agreements which were not rescinded, the statute did not affect the situation (R. 34).

In his dissenting opinion, Hon. Learned Hand considered that the written charters necessarily effected a rescis-

sion of the oral agreements, and he assumed that there was no consideration for them (R. 35). Only by his interpretation of the contracts (wherein he dissented from the majority of the Court) did he arrive at the conclusion that the New York statute was involved (R. 36). Thus the statute is only secondarily involved in the matters at issue, and can become applicable only upon a finding that the majority of the Court below was wrong in holding that the written charterparties did not supersede the oral agreements.

2. The New York statute cannot control a court of admiralty in its adjudication of maritime contracts.

Even assuming that the minority opinion's interpretation of the contracts was correct, the New York statute has no force here. That opinion held "tentatively"—though with considerable doubt—that the New York statute should apply to maritime contracts, but added:

> "It is a rather curious irony that a statute, designed generally to avoid injustice, should in this instance operate so harshly" (R. 36).

The chartering agreements in this case, though made in New York, are for the employment of the vessels in foreign trade. There can, of course, be no question but that they are maritime contracts. *Morewood* v. *Enequist*, 23 How. 491; *Matson Navigation Co.* v. *U. S.*, 284 U. S. 352, 358. That oral agreements of charter and affreightment are valid and enforceable in a court of admiralty was not denied by the petitioner herein in either of the Courts below, and the District Court expressly so held (R. 14). This is in accordance with the authorities. *James* v. *Brophy*, (C. C. A. 1st, 1895) 71 Fed. 310; *West India*

S.S. Co. v. *Chicago Housewrecking Co.,* (C. C. A. 2nd, 1918) 249 Fed. 338; *Lutz* v. *Douglass et al.,* (C. C. A. 2nd, 1921) 273 Fed. 685.

In considering that the New York statute applied to such contracts as these, the minority of the Court below apparently overlooked the decision of this Court in *Union Fish Co.* v. *Erickson,* (1919) 248 U. S. 308. Nor does the petitioner's brief herein, wherein it relies upon the State statute as ground for review by this Court, mention that decision. In *Union Fish Co.* v. *Erickson* this Court held that an oral contract for services as master of a vessel, being a contract of a maritime character, was not affected by the Civil Code of California which required such agreements to be in writing. Upon a full review of the authorities, this Court said:

> "The maritime law controlled in this respect, and was not subject to limitation because the particular engagement happened to be made in California. * * * If one State may declare such contracts void for one reason, another may do likewise for another. Thus the local law of a State may deprive one of relief in a case brought in a court of admiralty of the United States upon a maritime contract, and the uniformity of rules governing such contracts may be destroyed by perhaps conflicting rules of the States" (pp. 313, 314).

It is respectfully submitted that *Union Fish Co.* v. *Erickson* completely eliminates the New York statute. It follows that, even if the written charterparties had superseded the oral agreements, their lack of consideration was not cured by the statute, the oral agreements remained in effect, and the petitioner should be held answerable for their breach.

POINT III

The petition presents no question of public importance or any other question requiring this Court to review the decision of the Circuit Court of Appeals, and the petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN TILNEY CARPENTER,
Counsel for Libelant-Respondent.

New York, N. Y.

February 25, 1942.